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December 18, 2000

BY HAND DELIVERY

Adam Candeub
Common Carrier Bureau
Federal Communications Commission
455 12th St., SW
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Inmate Payphone Services, CC Docket No. 96-128**

Dear Mr. Candeub:

On behalf of CURE, I wanted to take this opportunity to provide you with some data regarding rates for inmate payphone calls. While the data is not as detailed as it could be, it is interesting to evaluate it and see the wide disparity in rates between prison systems.

In 1996, CURE conducted an informal survey of state correctional systems and public utility commissions to examine the rate structures in place for inmate calling. We have enclosed a copy for your review and hope you find it helpful even though it may well be somewhat dated.

The Inmate Calling Service Providers Coalition ("ICSPC") also placed some rate and cost information in the record that is somewhat interesting when dissected.^{1/} These charts, enclosed behind Tab B, are entitled "Rates for a 12 Minute Local Collect Call and State-Imposed Rate Ceilings," "Inmate Service Fee - 12 Minute Local Call Cost Analysis," and "AT&T Inmate Rates v. Standard Collect Rates."

First, it should be noted that cost data in a non-competitive environment is inherently suspect according to fundamental principles of economics because there are no competitive pressures to drive these supposed costs down to actual costs. Second, the total cost of a 12 minute local call as provided by ICSPC appears suspect on its face because the Commission of 30 percent and the unbillables/ uncollectibles of 19 percent are taken from the total rather than the total costs figure. Recomputing these numbers provides a commission of 0.3297 and unbillables/uncollectibles of .20881. On top of these adjustments, it must be noted that the profit for the service providers is already figured into these costs at 0.082. Making these three

^{1/} Letter from Robert F. Aldrich, Inmate Calling Service Providers Coalition to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-128 (Oct. 12, 2000).

Washington Boston New York Reston New Haven

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List A B C D E

Adam Candeub
December 18, 2000
Page 2

adjustments, the break-even cost needs to be reduced by at least 0.62051 to \$1.53449 per 12 minute call. This figure assumes that all of the cost factors imbedded into those rates are accurate. The Coalition seems to assert that providers can only operate profitably in 19 states. When the rates are readjusted, however, it becomes clear that providers are profiting, even by their own numbers, in at least 39 states. This is hardly the dire situation that calls for federal intervention to increase rates. Interestingly, nowhere is it suggested that the cost-of-service, beyond state commission charges, are increasing. Furthermore, we have heard of no instances in Tennessee where prisons or jails are unable to provide inmate payphone services for lack of vendors. We believe that this is a more telling test of whether rates cover the provider's costs and it negates the theory advanced by ICSPC that there is no way to profit in this business.

The local call rates also show a disparity between the highest rate in Illinois of \$4.07 per local call to a low rate in Tennessee of \$0.85 for a 12 minute local call. There appears to be no rational explanation for this disparity of \$3.22 per call and we believe that prisons and providers in the higher-rate states should take immediate steps to decrease their rates to the levels of the low-rate states.

In the long distance and international realm, rates appear to be increasing. While we do not have data at the level we do for intrastate rates, the limited evidence we have seen and the anecdotal information we have observed leads us to the same conclusion that ICSPC came to, namely that long distance rates are increasing. This increase can be explained, we believe, due to the fact the long distance market for inmate calling services was deregulated without any competitive pressures being brought to bear on the marketplace. ICSPC suggests that the problem is rate subsidization. We believe that the answer to either theory is to limit rates at all levels and introduce competition to the market as North Carolina did legislatively earlier this year (*see* Tab C).

A third issue deals with rates charged in the Federal Bureau of Prisons. I was unable to turn up any detailed rate information. What we do know about payphone services in the Bureau of Prison is that they are generally tied to interstate rates. Prisoners also have a choice between debit and collect calls. The Bureau of Prisons also turns a large profit on these operations - over \$10 million per year.^{2/} These profits, if used properly, would be more than sufficient to address any potential security concerns.^{3/}

Some would suggest that the rising rates in the unregulated interstate market justify allowing higher rates in the regulated intrastate market. We would argue that the opposite is true. The rising interstate rates simply prove that action needs to be taken to force decreasing

^{2/} OFFICE OF INSPECTOR GENERAL, U.S. DEPT. OF JUSTICE, CRIMINAL CALLS: A REVIEW OF THE BUREAU OF PRISONS' MANAGEMENT OF INMATE TELEPHONE PRIVILEGES (1999), *available at* <http://www.usdoj.gov/oig/bopcalls/callsp8.htm>.

^{3/} *See id.*

Adam Candeub
December 18, 2000
Page 3

pressure on rates. We believe we have a case of market failure that is harmful to consumers. The solutions to this problem will need to include opening the market to more choices for consumers and insuring that the rates they pay are lower rather than higher.

Thank you for your consideration in this matter. As I find additional rate information, especially more current data, I will pass it along to you. If you have any questions, please feel free to contact me at 202.434.7477.

Sincerely,



Christopher R. Bjornson*

Enclosures

- Tab A: Summary of State Survey Regarding Rate Restrictions on Interlata, Interstate Inmate Telephone Rates
- Tab B: Data provided by the Inmate Calling Service Providers Coalition - "Rates for a 12 Minute Local Collect Call and State-Imposed Rate Ceilings," "Inmate Service Fee - 12 Minute Local Call Cost Analysis," and "AT&T Inmate Rates v. Standard Collect Rates."
- Tab C: General Assembly of North Carolina, Session 1999, House Bill 1844

Cc: Charlie Sullivan
Kay Perry
Cheryl Tritt
Casey Anderson

DCDOCS:185357.1(3Z0T011.DOC)

* Not admitted in the District of Columbia.
Practicing under the supervision of Mintz Levin partners licensed in the District.



SUMMARY OF STATE SURVEY REGARDING RATE RESTRICTIONS ON INTERLATA, INTRASTATE INMATE TELEPHONE RATES

Summarized below are the results of telephone interviews that were conducted with regulatory officials from twenty-eight (28) states during the first two weeks of August 1996. These interviews sought to determine whether or not the states place any restrictions on the rates charged for interLATA, intrastate collect calls placed from inmate-only telephones located in correctional institutions.

Of the twenty-eight states from which we were able to obtain information during the two week period, no intrastate rate restrictions are currently in effect in eight states: Delaware, Hawaii, Nebraska, North Dakota, South Dakota, Utah, Virginia and Texas. Virginia is about to conduct a study to see if implementation of such a rate cap would be warranted under the Telecommunications Act of 1996. Texas is presently considering the imposition of rate restrictions due to recent legislation.^{1/}

Twenty of the twenty-eight states from whom we were able to obtain information have rate caps in place for intrastate, long distance calls. These restrictions generally are set either at the rates charged by AT&T or at a rate tied to a state-specific formula.

Nine of the twenty-eight states (Alabama, Georgia, Maryland, Massachusetts, Minnesota, Missouri, North Carolina, South Carolina and Tennessee) cap their interLATA, interstate inmate payphone rates (usage rates + all applicable surcharges) at the rates of AT&T.^{2/} Vermont and New Hampshire, two single-LATA states, cap their intrastate rates at

^{1/} The Texas legislature implemented a new law in 1995 which appears to have changed how inmate payphone services should be conducted in Texas. The state currently is considering whether the new statute does in fact require it to place rate caps on the inmate payphones.

^{2/} C.U.R.E. was unable to determine whether these states recognize any distinction between AT&T's standard rates for ordinary payphone services and its specialized rates for inmate calling services. However, many of the state contacts indicated that inmate-telephone rates are capped at the same rates as ordinary public payphones. Moreover, C.U.R.E. assumes that AT&T does not provide inmate services in some of these states, thereby leading it to believe that a rate restriction in those states would not be tied to AT&T's rates for inmate calling services, as it does on all other payphones. The comments filed by Invision support this assumption. See Comments of Invision Telecomm., Inc. to Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (dated July 17, 1996) at 8.

the NYNEX rates. Wisconsin sets the rate cap at what C.U.R.E. understands to be an average of the rates charged by Ameritech and AT&T.^{3/} Surcharges for these states run from a high of \$1.75 in Alabama to a low of zero in South Carolina and Maryland, where subscriber surcharges are not allowed.

Five states (Colorado, Florida, Louisiana, Michigan and Ohio) impose rate caps on all payphone providers (including inmate telephones), but do so according to state specific formulas. The surcharge maximums in Florida, Louisiana and Colorado range from a high of \$2.10 for a station-to-station collect call and \$3.90 for a person-to-person collect call (Colorado) to a low of \$1.25 in Florida (\$1.00 surcharge + \$.25 set use fee for all completed calls).

In Colorado, the mileage/usage rates are as follows:

0-10	.21 initial	.15 add'l
11-22	.25 initial	.18 add'l
23-55	.34 initial	.22 add'l
56-124	.41 initial	.27 add'l
125-292	.45 initial	.30 add'l
293 +	.49 initial	.33 add'l

A copy of the rule setting the rate cap is on Colorado's web page. Go to www.csn.net/~pucsmith and then to the rule section for CCR 723-18.

In Florida, the usage rate is \$.25 per minute for both intraLATA and interLATA calls, regardless of mileage.

In Louisiana, rates are capped as reflected in the chart attached hereto at Appendix A. These rates, effective March 1, 1994, divide the rates according to day, night & weekend, and evening rates. The surcharges are determined by the type of call.

For Michigan, the maximum charge per call for a collect call is \$5.70; under this system the total of all surcharges and usage rates cannot be more than \$5.70. In Ohio, the maximum charge per call is set at \$2.50.

Information gathered on three states shows that some rate restriction is imposed, but the information provided does not reveal how those restrictions are imposed. Indiana sets its

^{3/} C.U.R.E. is informed that Wisconsin does not have in affect a specific order that caps inmate telephone rates, but rather that the state employs a company specific application procedure whereby rates are capped at an average of the rates charged by Ameritech and AT&T.

rate cap for alternative operator services (AOS) at the IURCTC7 tariff filed by BellSouth. For resellers, however, there is no rate cap. A prison payphone provider, thus, would only be subject to a rate cap under Indiana's system if, due to the services offered, they qualify as an AOS. Oklahoma and Pennsylvania both impose rate restrictions, but we were unable to ascertain the specific rates.

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B



ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Rates for a 12 Minute Local Inmate Collect Call and State-Imposed Rate Ceilings

State	RBOC	Local Usage Rates			Collect Call Surcharge	Total Cost	Rate Cap?	Rate Cap Details
		Init. Min	Add'l Min.	Notes				
1 Illinois	SBC	\$ 0.14	\$ 0.13		\$ 2.50	\$ 4.07	No	
2 New Hampshire	Bell Atlantic	\$ 0.35	\$ 0.24		\$ 1.05	\$ 4.04	Yes	Capped at RBOC (Bell Atlantic) tariff rates
3 Indiana	SBC	\$ 0.35	N/A	rates detariffed -- \$.35 per call assumed	\$ 3.00	\$ 3.35	Yes	Capped at tariffed rates of prevailing ILEC for origination of call
4 Wisconsin	SBC	\$ 0.35	N/A	rates detariffed -- \$.35 per call assumed	\$ 3.00	\$ 3.35	Yes	Capped at RBOC (SBC) tariff rates
5 Kansas	SBC	N/A	N/A	no per minute rate -- surcharge only	\$ 3.25	\$ 3.25	No	
6 California	SBC	\$ 0.35	N/A		\$ 2.90	\$ 3.25	No	
7 Maine	Bell Atlantic	\$ 0.35	\$ 0.14		\$ 1.30	\$ 3.19	Yes	Rates are not capped by rule, but PUC has never allowed a tariff rate higher than Bell Atlantic
8 Texas	SBC	N/A	N/A	no per minute rate -- surcharge only	\$ 3.00	\$ 3.00	Yes	All intrastate collect surcharges capped at \$3.75
9 Ohio	SBC	\$ 0.35	N/A		\$ 2.50	\$ 2.85	Yes	Capped at RBOC (SBC) tariff rates
10 Georgia	Bell South	\$ 0.35	N/A		\$ 2.45	\$ 2.80	Yes	Capped at RBOC (Bell South) tariff rates
11 Nebraska	US West	\$ 0.35	N/A		\$ 2.25	\$ 2.60	No	
12 North Dakota	US West	\$ 0.35	N/A		\$ 2.25	\$ 2.60	No	
13 Wyoming	US West	\$ 0.35	N/A		\$ 2.25	\$ 2.60	No	
14 Oklahoma	SBC	N/A	N/A	no per minute rate -- surcharge only	\$ 2.55	\$ 2.55	Yes	Capped at maximum rate of any certificated LEC in state
15 South Dakota	US West	\$ 0.35	N/A	rates detariffed -- \$.35 per call assumed	\$ 2.10	\$ 2.45	Yes	Capped at RBOC (US West) tariff rates
16 Michigan	SBC	\$ 0.35	N/A		\$ 2.05	\$ 2.40	Yes	Rates capped at 300% of average of carrier rates
17 Colorado	US West	\$ 0.35	N/A		\$ 1.85	\$ 2.20	Yes	Capped at RBOC (US West) tariff rates
18 Connecticut	SBC	\$ 0.35	N/A	rates detariffed -- \$.35 per call assumed	\$ 1.75	\$ 2.10	Yes	Capped at RBOC (Bell Atlantic) tariff rates
19 Florida	Bell South	\$ 0.35	N/A		\$ 1.75	\$ 2.10	Yes	Collect call surcharges capped at \$1.75
20 Vermont	Bell Atlantic	\$ 0.35	N/A		\$ 1.65	\$ 2.00	No	
21 Missouri	SBC	\$ 0.35	N/A		\$ 1.60	\$ 1.95	No	
22 New York	Bell Atlantic	\$ 0.35	See note	Init 3 min \$.35, \$.05 ea. add'l 2 min	\$ 1.30	\$ 1.90	Yes	Capped at tariffed rates of prevailing ILEC for origination of call
23 Kentucky	Bell South	\$ 0.35	N/A		\$ 1.50	\$ 1.85	Yes	Capped at tariffed rates of prevailing ILEC for origination of call
24 New Mexico	US West	\$ 0.35	N/A		\$ 1.50	\$ 1.85	No	
25 Utah	US West	\$ 0.35	N/A		\$ 1.50	\$ 1.85	No	
26 Rhode Island	Bell Atlantic	\$ 0.35	See note	Init. 5 min \$.35, \$.05 ea. add'l 3 min	\$ 1.35	\$ 1.85	Yes	Capped at tariffed rates of prevailing ILEC for origination of call
27 New Jersey	Bell Atlantic	\$ 0.35	See note	Init 4 min \$.35, \$.10 ea. add'l 4 min	\$ 1.26	\$ 1.81	No	
28 Arkansas	SBC	N/A	N/A	no per minute rate -- surcharge only	\$ 1.80	\$ 1.80	Yes	Capped at RBOC (SBC) tariff rates
29 Mississippi	Bell South	\$ 0.35	N/A		\$ 1.44	\$ 1.79	Yes	Capped at RBOC (BellSouth) tariff rates
30 Montana	US West	\$ 0.35	N/A	rates detariffed -- \$.35 per call assumed	\$ 1.35	\$ 1.70	No	
31 Pennsylvania	Bell Atlantic	\$ 0.35	See note	Init 10 min \$.35, \$.05 ea. add'l 3 min	\$ 1.30	\$ 1.70	Yes	Capped at RBOC (Bell Atlantic) tariff rates
32 Louisiana	Bell South	\$ 0.35	See note	Init 5 min \$.35, \$.35 ea. add'l 5 min	\$ 1.83	\$ 1.68	Yes	Capped at tariffed rates of prevailing ILEC for origination of call
33 Arizona	US West	\$ 0.35	N/A		\$ 1.30	\$ 1.65	Yes	Capped at tariffed rates of prevailing ILEC for origination of call
34 Idaho	US West	\$ 0.35	N/A		\$ 1.30	\$ 1.65	No	
35 Iowa	US West	\$ 0.35	N/A		\$ 1.30	\$ 1.65	Yes	Capped at tariffed rates of prevailing ILEC for origination of call
36 Minnesota	US West	\$ 0.35	N/A		\$ 1.30	\$ 1.65	Yes	Capped at RBOC (US West) tariff rates
37 Oregon	US West	\$ 0.35	N/A		\$ 1.30	\$ 1.65	No	
38 Alabama	Bell South	\$ 0.35	N/A		\$ 1.25	\$ 1.60	Yes	Capped at tariffed rates of prevailing ILEC for origination of call
39 Hawaii	GTE	\$ 0.35	N/A	rates detariffed -- \$.35 per call assumed	\$ 1.20	\$ 1.55	No	
40 Delaware	Bell Atlantic	\$ 0.35	N/A		\$ 1.10	\$ 1.45	No	
41 Nevada	SBC	\$ 0.35	N/A		\$ 1.00	\$ 1.35	Yes	Capped at RBOC (SBC) tariff rates
42 Massachusetts	Bell Atlantic	\$ 0.35	N/A		\$ 0.86	\$ 1.21	Yes	Capped at RBOC (Bell Atlantic) tariff rates
43 North Carolina	Bell South	\$ 0.35	N/A		\$ 0.80	\$ 1.15	Yes	Capped at tariffed rates of prevailing ILEC for origination of call
44 Virginia	Bell Atlantic	\$ 0.35	N/A		\$ 0.75	\$ 1.10	No	
45 South Carolina	Bell South	\$ 0.35	N/A		\$ 0.70	\$ 1.05	No	
46 Washington	US West	\$ 0.35	N/A		\$ 0.85	\$ 1.00	Yes	Capped at maximum rate of any certificated ILEC in state
47 Maryland	Bell Atlantic	\$ 0.35	N/A		\$ 0.60	\$ 0.95	Yes	Capped at RBOC (Bell Atlantic) tariff rates
48 West Virginia	Bell Atlantic	\$ 0.35	N/A		\$ 0.80	\$ 0.95	Yes	Rates not capped by rule, but PUC has never allowed tariffed rate higher than Bell Atlantic
49 Tennessee	Bell South	\$ 0.35	N/A		\$ 0.50	\$ 0.85	Yes	Capped at RBOC (Bell South) tariff rates
50 Alaska		N/A	N/A		N/A	N/A	N/A	N/A
						\$ 2.06		

* The surcharge allowed on inmate calls is lower than the surcharge allowed on regular collect calls in these states.

INMATE SERVICE FEE - 12 Minute Local Call COST ANALYSIS

VARIABLES	Pay Phone		Inmate	
	¹ <u>Local Collect Call</u>		<u>Local Collect Call</u>	
Local Service Charges	² \$ 52.53		\$ 64.05	
Flex-ANI Charge	\$ 1.08		\$ 1.08	
Number of Calls	439		268	
Billing & Collection Fees	³ \$ 0.18		\$ 0.18	
Maintenance	\$ 18.90		\$ 24.12	
Equipment Depreciation	\$ 12.73		\$ 29.48	
Overhead Total	\$ 19.62		\$ 59.96	
Return (profit)	⁴ \$ 15.31		\$ 22.10	
Commission %	⁵ 30%		30%	
Unbillables %	⁶ 0%		5%	
Uncollectibles %	⁷ 2%		14%	
Tax				

	(1) Pay Phone	(2) Inmate	Cost Differential
	<u>Local Collect Call</u>	<u>Local Collect Call</u>	<u>(Col 2 - Col 1)</u>
Local Service Charges	⁸ \$ 0.122	\$ 0.243	\$ 0.121
Billing & Collection Fees	\$ 0.180	\$ 0.180	\$ -
Validation	⁹ \$ 0.113	\$ 0.170	\$ 0.057
Maintenance & Repairs	\$ 0.043	\$ 0.090	\$ 0.047
Equipment Depreciation	\$ 0.029	\$ 0.110	\$ 0.081
Overhead	\$ 0.045	\$ 0.224	\$ 0.179
Return (profit)	\$ 0.035	\$ 0.082	\$ 0.048
 Total Costs	 \$ 0.567	 \$ 1.099	 \$ 0.532
 Commission @ 30%	 \$ 0.254	 \$ 0.647	 \$ 0.393
Unbillables/Uncollectibles @ 19%	\$ 0.025	\$ 0.410	\$ 0.384
 TOTAL	 \$ 0.846	 \$ 2.155	 \$ 1.309

FOOTNOTES:

- 1) Except where indicated, average figures for payphone services are taken from the FCC's Third Report and Order, and average figures for inmate services are taken from prior Coalition filings
- 2) Local service charges for payphone services include usage charges as estimated by the RBOC/GTE/SNET Coalition. Local service charges for inmate services are estimated based on analysis of ILEC tariffs in the 13 states w/ the lowest local collect call rates.
- 3) Estimate based on review of LEC and clearinghouse fees
- 4) Payphone returns calculated at 11% and inmate returns at 15%
- 5) Commission % for payphone services is assumed to be equal to commission % for inmate services
- 6) Unbillables for payphone services are estimated to be negligible. Estimated unbillables for inmate services have increased from 3% to 5% since previous Commission filings
- 7) Uncollectibles for payphone services are based on estimate provided by clearinghouse
- 8) Flex ANI fees are included in Local Service Charge per-call calculations
- 9) Validation estimates based on estimated call completion ratios for payphone services and inmate services

AT&T

INMATE RATES

STANDARD COLLECT RATES

<u>DATE</u>	<u>InterState Surcharge/ Per Minute Rate</u>	<u>Total Cost of 12 Minute Call</u>	<u>InterState Surcharge/ Per Minute Rate</u>	<u>Total Cost of 12 Minute Call</u>
November 19, 1997	\$3.00 / \$.40	\$7.80	\$2.25 / \$.40	\$7.05
October 17, 1998	\$3.00 / \$.45	\$8.40	\$2.25 / \$.45	\$7.65
November 21, 1998	\$3.00 / \$.50	\$9.00	\$2.25 / \$.50	\$8.25
March 1, 1999	\$3.00 / \$.55	\$9.60	\$3.45 / \$.55	\$10.05
July 8, 1999	\$3.00 / \$.59	\$10.08	\$3.45 / \$.59	\$10.53
July 22, 1999	\$3.95 / \$.59	\$11.03	\$3.45 / \$.59	\$10.53
December 1, 1999	\$3.95 / \$.59	\$11.28	\$3.45 / \$.59	\$11.73
March 1, 2000	\$3.95 / \$.69	\$12.23	\$4.99 / \$.69	\$13.27



C



ALL STATE LEGAL 800 222 0510 EUS11 RECYCLED

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999
HOUSE BILL 1844

Short Title: Prison Telephone Systems. (Public)

Sponsors: Representatives Nesbitt; Adams, Sherrill, and
Miller.

Referred to: Rules, Calendar, and Operations of the House.

May 30, 2000

**A BILL TO BE ENTITLED AN ACT TO DIRECT THE DEPARTMENT
OF CORRECTION TO PROVIDE TELEPHONE SYSTEMS THAT DO
NOT PERMIT A SINGLE VENDOR TO CONTROL THE RATES PAID BY
RECIPIENTS OF INMATES' CALLS.**

Whereas, telecommunications services made available to inmates in the State prison system are limited to a system that charges the recipients of phone calls from the inmates at rates that are determined by a single vendor under contract with the Department of Correction; and

Whereas, this arrangement leaves family members and acquaintances of inmates who receive calls from the inmates with no control over the rates they must pay to communicate with the inmates; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Department of Correction shall provide telephone systems in all institutions in the State prison system that do not permit a single vendor to control the rates paid by the recipients of the inmates' calls, either by allowing inmates to use prepaid telephone cards, by allowing them access to competitive telecommunications providers, or by some other method that accomplishes this purpose.

Section 2. The Department of Correction shall report to the Joint Legislative Commission on Governmental Operations by October 1, 2000, on the steps it has taken to comply with this act and shall provide a report to the 2001 General Assembly on the telephone systems available to inmates in the State prison system.

Section 3. This act is effective when it becomes law.